

ELECTION LAW REFORMS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Neil A. Hansen

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies provisions of the Election Code relating to the procedures for conducting an election.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ requires the Department of Health's Office of Vital Records and Statistics to provide the county clerk with a monthly list of those county residents that have died in order to assist the county clerk with removing invalid names from the voter registration list;
- ▶ requires that voters who vote by provisional ballot be given notice that they may provide additional identity information to the election officer within two business days;
- ▶ requires each election watcher to wear an identification badge;
- ▶ defines permitted conduct for persons serving as election watchers;
- ▶ permits an election official to have a watcher removed from the premises if a watcher interferes with the voting process or violates a provision of the Election Code and fails to respond to a warning from the election official;
- ▶ provides the grounds upon which a person's right to vote in an election may be challenged during or before an election;



28 ▶ requires that written challenges to a person's right to vote in an election must be
29 filed in advance of the election and provides procedures for filing and resolving the
30 challenges before the date of the election;

31 ▶ requires the election officer to notify each person whose right to vote in the election
32 has been challenged in writing and permits the person who has been challenged to
33 provide information in response to the challenge;

34 ▶ requires that written challenges be submitted under oath and be subject to criminal
35 penalties for false statements;

36 ▶ provides that an election officer's determination regarding a challenge to a person's
37 right to vote is subject to judicial appeal;

38 ▶ requires all documents filed in relation to a written challenge to be public records;

39 ▶ clarifies language relating to challenges to a person's right to vote at the polling
40 place;

41 ▶ clarifies that absentee ballots must comply with delivery requirements in order to be
42 valid;

43 ▶ requires election returns to be delivered to the county seat within 12 hours after the
44 polls close;

45 ▶ requires certain election materials to be retained for a minimum of 24 months,
46 rather than a minimum of 22 months;

47 ▶ requires each voting booth to have a shield, curtain, or other enclosure that
48 preserves the voter's privacy;

49 ▶ requires poll workers to wear identification badges; and

50 ▶ makes technical changes.

51 **Monies Appropriated in this Bill:**

52 None

53 **Other Special Clauses:**

54 None

55 **Utah Code Sections Affected:**

56 **AMENDS:**

57 **20A-1-102**, as last amended by Laws of Utah 2007, Chapters 75, 256, 285, and 329

58 **20A-2-305**, as last amended by Laws of Utah 1997, Chapter 183

59 **20A-3-105.5**, as last amended by Laws of Utah 2007, Chapter 75
60 **20A-3-201**, as last amended by Laws of Utah 2006, Chapter 326
61 **20A-3-306**, as last amended by Laws of Utah 1997, Chapter 24
62 **20A-3-408.5**, as enacted by Laws of Utah 2006, Chapter 273
63 **20A-4-107**, as last amended by Laws of Utah 2007, Chapters 75 and 285
64 **20A-4-201**, as last amended by Laws of Utah 2006, Chapter 326
65 **20A-4-202**, as last amended by Laws of Utah 2007, Chapters 75 and 97
66 **20A-5-403**, as last amended by Laws of Utah 2007, Chapter 329
67 **20A-5-605**, as last amended by Laws of Utah 2007, Chapter 75

68 ENACTS:

69 **20A-3-202.3**, Utah Code Annotated 1953
70 **20A-3-202.5**, Utah Code Annotated 1953

71 REPEALS AND REENACTS:

72 **20A-3-202**, as last amended by Laws of Utah 2007, Chapter 75

73

74 *Be it enacted by the Legislature of the state of Utah:*

75 Section 1. Section **20A-1-102** is amended to read:

76 **20A-1-102. Definitions.**

77 As used in this title:

78 (1) "Active voter" means a registered voter who has not been classified as an inactive
79 voter by the county clerk.

80 (2) "Automatic tabulating equipment" means apparatus that automatically examines
81 and counts votes recorded on paper ballots or ballot sheets and tabulates the results.

82 (3) "Ballot" means the storage medium, whether paper, mechanical, or electronic, upon
83 which a voter records his votes and includes ballot sheets, paper ballots, electronic ballots, and
84 secrecy envelopes.

85 (4) "Ballot sheet":

86 (a) means a ballot that:

87 (i) consists of paper or a card where the voter's votes are marked or recorded; and

88 (ii) can be counted using automatic tabulating equipment; and

89 (b) includes punch card ballots, and other ballots that are machine-countable.

(5) "Ballot label" means the cards, papers, booklet, pages, or other materials that contain the names of offices and candidates and statements of ballot propositions to be voted on and which are used in conjunction with ballot sheets that do not display that information.

(6) "Ballot proposition" means opinion questions specifically authorized by the Legislature, constitutional amendments, initiatives, referenda, and judicial retention questions that are submitted to the voters for their approval or rejection.

(7) "Board of canvassers" means the entities established by Sections 20A-4-301 and 20A-4-306 to canvass election returns.

(8) "Bond election" means an election held for the purpose of approving or rejecting the proposed issuance of bonds by a government entity.

(9) "Book voter registration form" means voter registration forms contained in a bound book that are used by election officers and registration agents to register persons to vote.

(10) "By-mail voter registration form" means a voter registration form designed to be completed by the voter and mailed to the election officer.

(11) "Canvass" means the review of election returns and the official declaration of election results by the board of canvassers.

(12) "Canvassing judge" means a poll worker designated to assist in counting ballots at the canvass.

(13) "Convention" means the political party convention at which party officers and delegates are selected.

(14) "Counting center" means one or more locations selected by the election officer in charge of the election for the automatic counting of ballots.

(15) "Counting judge" means a poll worker designated to count the ballots during election day.

(16) "Counting poll watcher" means a person selected as provided in Section 20A-3-201 to witness the counting of ballots.

(17) "Counting room" means a suitable and convenient private place or room, immediately adjoining the place where the election is being held, for use by the poll workers and counting judges to count ballots during election day.

(18) "County executive" has the meaning as provided in Subsection 68-3-12(2).

(19) "County legislative body" has the meaning as provided in Subsection 68-3-12(2).

121 (20) "County officers" means those county officers that are required by law to be
122 elected.

123 (21) "Election" means a regular general election, a municipal general election, a
124 statewide special election, a local special election, a regular primary election, a municipal
125 primary election, and a local district election.

126 (22) "Election Assistance Commission" means the commission established by Public
127 Law 107-252, the Help America Vote Act of 2002.

128 (23) "Election cycle" means the period beginning on the first day persons are eligible to
129 file declarations of candidacy and ending when the canvass is completed.

130 (24) "Election judge" means a poll worker that is assigned to:

131 (a) preside over other poll workers at a polling place;

132 (b) act as the presiding election judge; or

133 (c) serve as a canvassing judge, counting judge, or receiving judge.

134 (25) "Election officer" means:

135 (a) the lieutenant governor, for all statewide ballots;

136 (b) the county clerk or clerks for all county ballots and for certain ballots and elections
137 as provided in Section 20A-5-400.5;

138 (c) the municipal clerk for all municipal ballots and for certain ballots and elections as
139 provided in Section 20A-5-400.5;

140 (d) the local district clerk or chief executive officer for certain ballots and elections as
141 provided in Section 20A-5-400.5; and

142 (e) the business administrator or superintendent of a school district for certain ballots
143 or elections as provided in Section 20A-5-400.5.

144 (26) "Election official" means any election officer, election judge, or poll worker.

145 (27) "Election results" means, for bond elections, the count of those votes cast for and
146 against the bond proposition plus any or all of the election returns that the board of canvassers
147 may request.

148 (28) "Election returns" includes the pollbook, all affidavits of registration, the military
149 and overseas absentee voter registration and voting certificates, one of the tally sheets, any
150 unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all
151 spoiled ballots, the ballot disposition form, and the total votes cast form.

(29) "Electronic ballot" means a ballot that is recorded using a direct electronic voting device or other voting device that records and stores ballot information by electronic means.

(30) (a) "Electronic voting device" means a voting device that uses electronic ballots.

(b) "Electronic voting device" includes a direct recording electronic voting device.

(31) "Inactive voter" means a registered voter who has been sent the notice required by Section 20A-2-306 and who has failed to respond to that notice.

(32) "Inspecting poll watcher" means a person selected as provided in this title to witness the receipt and safe deposit of voted and counted ballots.

(33) "Judicial office" means the office filled by any judicial officer.

(34) "Judicial officer" means any justice or judge of a court of record or any county court judge.

(35) "Local district" means a local government entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and includes a special service district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act.

(36) "Local district officers" means those local district officers that are required by law to be elected.

(37) "Local election" means a regular municipal election, a local special election, a local district election, and a bond election.

(38) "Local political subdivision" means a county, a municipality, a local district, or a local school district.

(39) "Local special election" means a special election called by the governing body of a local political subdivision in which all registered voters of the local political subdivision may vote.

(40) "Municipal executive" means:

(a) the city council or town council in the traditional management arrangement established by Title 10, Chapter 3, Part 1, Governing Body;

(b) the mayor in the council-mayor optional form of government defined in Section 10-3-101; and

(c) the manager in the council-manager optional form of government defined in Section 10-3-101.

(41) "Municipal general election" means the election held in municipalities and local

districts on the first Tuesday after the first Monday in November of each odd-numbered year for the purposes established in Section 20A-1-202.

(42) "Municipal legislative body" means:

(a) the city council or town council in the traditional management arrangement established by Title 10, Chapter 3, Part 1, Governing Body;

(b) the municipal council in the council-mayor optional form of government defined in Section 10-3-101; and

(c) the municipal council in the council-manager optional form of government defined in Section 10-3-101.

(43) "Municipal officers" means those municipal officers that are required by law to be elected.

(44) "Municipal primary election" means an election held to nominate candidates for municipal office.

(45) "Official ballot" means the ballots distributed by the election officer to the poll workers to be given to voters to record their votes.

(46) "Official endorsement" means:

(a) the information on the ballot that identifies:

(i) the ballot as an official ballot;

(ii) the date of the election; and

(iii) the facsimile signature of the election officer; and

(b) the information on the ballot stub that identifies:

(i) the poll worker's initials; and

(ii) the ballot number.

(47) "Official register" means the official record furnished to election officials by the election officer that contains the information required by Section 20A-5-401.

(48) "Paper ballot" means a paper that contains:

(a) the names of offices and candidates and statements of ballot propositions to be voted on; and

(b) spaces for the voter to record his vote for each office and for or against each ballot proposition.

(49) "Political party" means an organization of registered voters that has qualified to

participate in an election by meeting the requirements of Title 20A, Chapter 8, Political Party Formation and Procedures.

(50) (a) "Poll worker" means a person assigned by an election official to assist with an election, voting, or counting votes.

(b) "Poll worker" includes election judges.

(c) "Poll worker" does not include a watcher.

(51) "Pollbook" means a record of the names of voters in the order that they appear to cast votes.

(52) "Polling place" means the building where voting is conducted.

(53) "Position" means a square, circle, rectangle, or other geometric shape on a ballot in which the voter marks his choice.

(54) "Provisional ballot" means a ballot voted provisionally by a person:

(a) whose name is not listed on the official register at the polling place;

(b) whose legal right to vote is challenged as provided in this title; or

(c) whose identity was not sufficiently established by a poll worker.

(55) "Provisional ballot envelope" means an envelope printed in the form required by Section 20A-6-105 that is used to identify provisional ballots and to provide information to verify a person's legal right to vote.

(56) "Primary convention" means the political party conventions at which nominees for the regular primary election are selected.

(57) "Protective counter" means a separate counter, which cannot be reset, that is built into a voting machine and records the total number of movements of the operating lever.

(58) "Qualify" or "qualified" means to take the oath of office and begin performing the duties of the position for which the person was elected.

(59) "Receiving judge" means the poll worker that checks the voter's name in the official register, provides the voter with a ballot, and removes the ballot stub from the ballot after the voter has voted.

(60) "Registration form" means a book voter registration form and a by-mail voter registration form.

(61) "Regular ballot" means a ballot that is not a provisional ballot.

(62) "Regular general election" means the election held throughout the state on the first

Tuesday after the first Monday in November of each even-numbered year for the purposes established in Section 20A-1-201.

(63) "Regular primary election" means the election on the fourth Tuesday of June of each even-numbered year, at which candidates of political parties and nonpolitical groups are voted for nomination.

(64) "Resident" means a person who resides within a specific voting precinct in Utah.

(65) "Sample ballot" means a mock ballot similar in form to the official ballot printed and distributed as provided in Section 20A-5-405.

(66) "Scratch vote" means to mark or punch the straight party ticket and then mark or punch the ballot for one or more candidates who are members of different political parties.

(67) "Secrecy envelope" means the envelope given to a voter along with the ballot into which the voter places the ballot after he has voted it in order to preserve the secrecy of the voter's vote.

(68) "Special election" means an election held as authorized by Section 20A-1-204.

(69) "Spoiled ballot" means each ballot that:

(a) is spoiled by the voter;

(b) is unable to be voted because it was spoiled by the printer or a poll worker; or

(c) lacks the official endorsement.

(70) "Statewide special election" means a special election called by the governor or the Legislature in which all registered voters in Utah may vote.

(71) "Stub" means the detachable part of each ballot.

(72) "Substitute ballots" means replacement ballots provided by an election officer to the poll workers when the official ballots are lost or stolen.

(73) "Ticket" means each list of candidates for each political party or for each group of petitioners.

(74) "Transfer case" means the sealed box used to transport voted ballots to the counting center.

(75) "Vacancy" means the absence of a person to serve in any position created by statute, whether that absence occurs because of death, disability, disqualification, resignation, or other cause.

(76) "Valid voter identification" means:

276 (a) a form of identification that bears the name and photograph of the voter which may
277 include:

- 278 (i) a currently valid Utah driver license;
279 (ii) a currently valid identification card that is issued by:
280 (A) the state;
281 (B) a local government within the state; or
282 (C) a branch, department, or agency of the United States;
283 (iii) an identification card that is issued by an employer for an employee;
284 (iv) a currently valid identification card that is issued by a college, university, technical
285 school, or professional school that is located within the state;
286 (v) a currently valid Utah permit to carry a concealed weapon;
287 (vi) a currently valid United States passport; or
288 (vii) a valid tribal identification card; or
289 (b) two forms of identification that bear the name of the voter and provide evidence
290 that the voter resides in the voting precinct, which may include:

- 291 (i) a voter identification card;
292 (ii) a current utility bill or a legible copy thereof;
293 (iii) a bank or other financial account statement, or a legible copy thereof;
294 (iv) a certified birth certificate;
295 (v) a valid Social Security card;
296 (vi) a check issued by the state or the federal government or a legible copy thereof;
297 (vii) a paycheck from the voter's employer, or a legible copy thereof;
298 (viii) a currently valid Utah hunting or fishing license;
299 (ix) a currently valid United States military identification card;
300 (x) certified naturalization documentation;
301 (xi) a currently valid license issued by an authorized agency of the United States;
302 (xii) a certified copy of court records showing the voter's adoption or name change;
303 (xiii) a Bureau of Indian Affairs card;
304 (xiv) a tribal treaty card;
305 (xv) a valid Medicaid card, Medicare card, or Electronic Benefits Transfer Card; or
306 (xvi) a form of identification listed in Subsection (76)(a) that does not contain a

photograph, but establishes the name of the voter and provides evidence that the voter resides in the voting precinct.

(77) "Valid write-in candidate" means a candidate who has qualified as a write-in candidate by following the procedures and requirements of this title.

(78) "Voter" means a person who meets the requirements for voting in an election, meets the requirements of election registration, is registered to vote, and is listed in the official register book.

(79) "Voter registration deadline" means the registration deadline provided in Section 20A-2-102.5.

(80) "Voting area" means the area within six feet of the voting booths, voting machines, and ballot box.

(81) "Voting booth" means:

(a) the space or compartment within a polling place that is provided for the preparation of ballots, including the voting machine enclosure or curtain; or

(b) a voting device that is free standing.

(82) "Voting device" means:

(a) an apparatus in which ballot sheets are used in connection with a punch device for piercing the ballots by the voter;

(b) a device for marking the ballots with ink or another substance;

(c) an electronic voting device or other device used to make selections and cast a ballot electronically, or any component thereof;

(d) an automated voting system under Section 20A-5-302; or

(e) any other method for recording votes on ballots so that the ballot may be tabulated by means of automatic tabulating equipment.

(83) "Voting machine" means a machine designed for the sole purpose of recording and tabulating votes cast by voters at an election.

(84) "Voting poll watcher" means a person appointed as provided in this title to witness the distribution of ballots and the voting process.

(85) "Voting precinct" means the smallest voting unit established as provided by law within which qualified voters vote at one polling place.

(86) "Watcher" means a person appointed or designated under Section 20A-3-201 to

observe one or more aspects of an election and includes a party poll watcher, an issue poll watcher, a candidate poll watcher, a voting poll watcher, a counting poll watcher, an inspecting poll watcher, and a testing watcher.

(87) "Western States Presidential Primary" means the election established in Title 20A, Chapter 9, Part 8.

(88) "Write-in ballot" means a ballot containing any write-in votes.

(89) "Write-in vote" means a vote cast for a person whose name is not printed on the ballot according to the procedures established in this title.

Section 2. Section **20A-2-305** is amended to read:

20A-2-305. Removing names from the official register -- General requirements.

(1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.

(2) The county clerk may remove a voter's name from the official register only when:

(a) the voter dies and the requirements of Subsection (3) are met;

(b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;

(c) the county clerk has obtained evidence that the voter's residence has changed, has mailed notice to the voter as required by Section 20A-2-306 and received no response from the voter, and the voter has failed to vote or appear to vote in either of the next two regular general elections following the date of the notice;

(d) the voter requests, in writing, that his name be removed from the official register;
or

(e) the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter.

(3) (a) The county clerk may remove a voter's name from the registration list upon the [annual] receipt of a listing of [all] deceased residents from the Department of Health's [Bureau] Office of Vital Records and Statistics.

(b) In order to assist the county clerk in identifying names that should be removed from the voter registration list, the Department of Health's Office of Vital Records and Statistics

shall, on a monthly basis, provide each county clerk with a listing of all county residents that have died since the previous list was provided.

Section 3. Section **20A-3-105.5** is amended to read:

20A-3-105.5. Manner of voting -- Provisional ballot.

(1) The poll workers shall follow the procedures and requirements of this section when:

- (a) the person's right to vote is challenged as provided in Section 20A-3-202;
- (b) the person's name is not found on the official register; or
- (c) the poll worker is not satisfied that the voter has provided valid voter identification.

(2) When faced with one of the circumstances outlined in Subsection (1)(a) or (1)(b), the poll worker shall:

(a) request that the person provide valid voter identification; and

(b) review the identification provided by the person.

(3) If the poll worker is satisfied that the person has provided valid voter identification that establishes the person's identity and residence in the voting precinct:

(a) the poll worker in charge of the official register shall:

(i) record in the official register the type of identification that established the person's identity and place of residence;

(ii) write the provisional ballot envelope number opposite the name of the voter in the official register; and

(iii) direct the voter to sign his name in the election column in the official register;

(b) another poll worker shall list the ballot number and voter's name in the pollbook; and

(c) the poll worker having charge of the ballots shall:

(i) endorse his initials on the stub;

(ii) check the name of the voter on the pollbook list with the number of the stub;

(iii) give the voter a ballot and a provisional ballot envelope; and

(iv) allow the voter to enter the voting booth.

(4) If the poll worker is not satisfied that the voter has provided valid voter identification that establishes the person's identity and residence in the voting precinct:

(a) the poll worker in charge of the official register shall:

400 (i) record in the official register that the voter did not provide valid voter identification;
401 (ii) record in the official register the type of identification that was provided by the
402 voter, if any;
403 (iii) write the provisional ballot envelope number opposite the name of the voter in the
404 official register; and
405 (iv) direct the voter to sign his name in the election column in the official register;
406 (b) another poll worker shall list the ballot number and voter's name in the pollbook;
407 and
408 (c) the poll worker having charge of the ballots shall:
409 (i) endorse his initials on the stub;
410 (ii) check the name of the voter on the pollbook list with the number of the stub;
411 (iii) give the voter a ballot and a provisional ballot envelope; and
412 (iv) allow the voter to enter the voting booth.
413 (5) Whenever the election officer is required to furnish more than one kind of official
414 ballot to a voting precinct, the poll workers of that voting precinct shall give the registered
415 voter the kind of ballot that the voter is qualified to vote.
416 (6) A poll worker shall provide each voter who votes a provisional ballot under the
417 requirements of this section with written notice that provides:
418 (a) notice that the voter may provide additional information or identification to the
419 election officer that will be used in determining the voter's eligibility to vote at the time the
420 provisional ballots are counted;
421 (b) a listing of the address and phone number for each location where the additional
422 information or identification may be provided, which location shall, at a minimum, include the
423 office of the election officer;
424 (c) notice that any additional information or identification must be provided to the
425 election officer within two business days after the date of the election;
426 (d) a listing of the types of identification that are acceptable under the requirements of
427 this title; and
428 (e) notice that the voter may determine if the voter's vote was counted according to the
429 procedures in Section 20A-6-105.5.
430 Section 4. Section **20A-3-201** is amended to read:

20A-3-201. Watchers -- Appointment -- Requirements -- Restrictions -- Criminal penalties.

(1) (a) (i) For each regular general election or statewide special election, and for each regular primary and Western States Presidential Primary, each registered political party and any person interested in a ballot proposition appearing on the ballot may appoint one person to act as a voting poll watcher to observe the casting of ballots, another person to act as a counting poll watcher to observe the counting of ballots, and another person to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot packages.

(ii) Each party poll watcher shall be designated, and his selection made known to the poll workers, by an affidavit made by the county chair of each of the parties.

(iii) Each issue poll watcher shall be designated, and his selection made known to the poll workers, by an affidavit made by the individual appointing him.

(b) (i) For each municipal general election, municipal primary, local special election, or bond election that uses paper ballots, each candidate and any person interested in an issue appearing on the ballot may appoint one person to act as a voting poll watcher to observe the casting of ballots, another person to act as a counting poll watcher to observe the counting of ballots, and another person to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot packages.

(ii) For each municipal general election, municipal primary, local special election, or bond election that uses ballot sheets, each candidate and any person interested in an issue appearing on the ballot may appoint one person to act as a voting poll watcher to observe the casting of ballots, another person to act as a counting poll watcher to observe the counting of ballots, and another person to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot packages.

(iii) Each candidate poll watcher shall be designated, and his selection made known to the poll workers, by an affidavit made by the candidate appointing him.

(iv) Each issue poll watcher shall be designated, and his selection made known to the poll workers, by an affidavit made by the individual appointing him.

(2) If an appointed poll watcher is temporarily absent for meals, or is sick or otherwise absent, that poll watcher may substitute some other watcher of similar political beliefs by informing the poll workers of the substitution by affidavit.

462 (3) (a) The election officer shall provide each watcher with a badge that displays:

463 (i) the words "Official Election Watcher";

464 (ii) the name of the watcher;

465 (iii) the name and date of the election at which the watcher is serving; and

466 (iv) the voting precinct or jurisdiction at which the watcher is serving.

467 (b) Each watcher shall wear the badge in plain sight at all times while serving as a
468 watcher.

469 ~~[(3)]~~ (4) (a) [Voting] A voting poll [watchers] watcher may watch and observe the
470 voting process, and may make a written memorandum~~[-, but they]~~.

471 (b) A voting poll watcher may not interfere in any way with the process of voting
472 ~~[except to challenge a voter as provided in this part.]~~, which interference includes:

473 (i) talking to voters, except for the purpose of stating a challenge to the voter's
474 eligibility to vote as provided under Section 20A-3-202.5;

475 (ii) using a photographic or other electronic monitoring or recording device;

476 (iii) using a telephone or other communication device at the polling location; or

477 (iv) participating in any form of electioneering.

478 ~~[(4)]~~ (5) [The] A counting poll watcher shall remain in the counting room, except in
479 the case of necessity, until the close of the polls ~~[and may not divulge the progress of the count~~
480 ~~until the count is completed]~~.

481 ~~[(5)]~~ (6) (a) [It is unlawful for a] Until the count is complete, a counting poll watcher
482 ~~[to]~~ may not communicate in any manner, directly or indirectly, by word or sign~~[-];~~:

483 (i) the progress of the count[-];

484 (ii) the result so far[-]; or

485 (iii) any other information about the count.

486 (b) Any person who violates this Subsection (6) is guilty of a third degree felony.

487 ~~[(6)]~~ (7) The inspecting poll watcher may be present in the office of the clerk or
488 recorder to whom ballots are delivered after elections to:

489 (a) inspect the condition of the packages containing the ballots upon their arrival; and

490 (b) observe the placement of these packages in a safe and secure place.

491 ~~[(7)]~~ (8) (a) Prior to each election in which a ballot sheet or electronic ballot is used,
492 any interested person may act as a testing watcher to observe a demonstration of logic and

accuracy testing of the voting devices prior to the commencement of voting.

(b) The election officer shall give prior notice of the logic and accuracy testing demonstration at least two days prior to the date of the demonstration by publishing notice of the date, time, and location of the demonstration in at least one newspaper of general circulation in the jurisdiction holding the election.

(c) An election official shall provide, upon request, a copy of testing results to a testing watcher.

(9) An election official may remove from the premises any watcher who interferes with the conduct of the election or violates any provision of this title if the watcher persists in the prohibited conduct after receiving a warning from the election official.

Section 5. Section **20A-3-202** is repealed and reenacted to read:

20A-3-202. Challenges to a voter's eligibility -- Grounds for challenge --

Procedures.

(1) A person's right to vote may be challenged on any of the following grounds:

(a) the voter is not the person whose name appears in the official register and under which name the right to vote is claimed;

(b) the voter is not a resident of Utah;

(c) the voter is not a citizen of the United States;

(d) the voter has not or will not have resided in Utah for 30 days immediately before the date of the election;

(e) the voter does not live in the voting precinct;

(f) the voter does not live within the geographic boundaries of the entity holding the election;

(g) the voter's principal place of residence is not in the voting precinct;

(h) the voter's principal place of residence is not in the geographic boundaries of the election area;

(i) the voter has already voted in the election;

(j) the voter is not at least 18 years of age;

(k) the voter is a convicted felon and the voter's right to vote in an election has not been restored under Section 20A-2-101.5; or

(l) in a regular primary election or in the Western States Presidential Primary, the voter

does not meet the political party affiliation requirements for the ballot the voter seeks to vote.

(2) A person who challenges a person's eligibility to vote at an election shall do so according to the procedures and requirements of:

(a) Section 20A-3-202.3, for challenges issued in writing before the date of an election;

or

(b) Section 20A-3-202.5, for challenges issued in person at the time of voting.

Section 6. Section **20A-3-202.3** is enacted to read:

20A-3-202.3. Challenges to a voter's eligibility in writing -- Procedure -- Form of challenge.

(1) (a) A person may challenge the right to vote of any person whose name appears on the official register by filing with the election officer, during regular business hours and not later than 30 days before the date that early voting commences, a written statement that:

(i) lists the name and address of the person filing the challenge;

(ii) for each voter who is challenged:

(A) identifies the name of the challenged voter;

(B) lists the last known address or telephone number of the challenged voter;

(C) provides the basis for the challenge, as provided under Section 20A-3-202; and

(D) provides facts and circumstances supporting the factual basis provided; and

(iii) includes a signed affidavit, subject to penalties of perjury, swearing that, to the filer's personal knowledge and belief, having exercised due diligence to personally verify the evidence presented, each challenged voter either is not qualified to vote or does not reside at the address listed on the challenged voter's registration record.

(b) The challenge may not be based on unsupported allegations or allegations by anonymous third parties.

(c) The election officer may provide a form for challenges filed under this section, provided that the form meets the requirements of this section.

(2) (a) If the challenge is not in the proper form or the factual basis for the challenge does not meet the standards for a challenge as provided in this section, the election officer may dismiss the challenge and notify the filer of the reasons for the dismissal in writing.

(b) A challenge is not in the proper form if it is incomplete on its face.

(3) Upon receipt of a challenge that meets the requirements for filing under this

section, the election officer shall, within 72 hours of receipt of the challenge:

(a) publish a copy of the challenge and the affidavit on the election officer's web site;

and

(b) attempt to notify each challenged voter:

(i) that a challenge has been filed against the challenged voter;

(ii) of the bases for the challenge, which may include providing a copy of the challenge and affidavit to the challenged voter; and

(iii) that the challenged voter may submit information, a sworn statement, or other evidence supporting the challenged voter's right to vote in the election to the election officer no later than 15 days before the date that early voting commences.

(4) (a) Prior to the date that voting commences, the election officer shall determine whether each challenged voter is eligible to vote.

(b) (i) The filer of the challenge has the burden to prove, by clear and convincing evidence, that the basis for challenging the voter's right to vote is valid.

(ii) The election officer shall resolve the challenge based on the available facts and information submitted, which may include voter registration records and other documents or information available to the election officer.

(5) A person who files a challenge under the requirements of this section is subject to criminal penalties for false statements as provided under Sections 76-8-503 and 76-8-504 and any other applicable criminal provision.

(6) A decision of the election officer regarding a person's eligibility to vote or regarding the issuance of an administrative fine may be appealed to the district court having jurisdiction over the location where the challenge was filed.

(7) A challenged voter may register to vote or change the location of the voter's voter registration, if otherwise entitled to do so under the law.

(8) All documents pertaining to a voter challenge are public records.

Section 7. Section 20A-3-202.5 is enacted to read:

20A-3-202.5. Challenges to a voter's eligibility at time of voting -- Procedure.

(1) When any voter applies for a ballot or when a voter offers a ballot for deposit in the ballot box, a poll worker or any other person may challenge the voter's right to vote in that voting precinct or in that election by orally stating the challenged voter's name and the grounds

for the challenge, as provided under Section 20A-3-202.

(2) The poll worker shall record any challenge in the official register and on the challenge sheets in the pollbook, including:

(a) the name of the challenged voter;

(b) the name of the person making the challenge; and

(c) the grounds asserted for the challenge.

(3) If a voter's right to vote is challenged under this section, the poll worker shall follow the procedures and requirements of Section 20A-3-105.5.

Section 8. Section **20A-3-306** is amended to read:

20A-3-306. Voting ballot -- Returning ballot.

(1) (a) To vote a mail-in absentee ballot, the absentee voter shall:

(i) complete and sign the affidavit on the envelope;

(ii) mark his votes on the absentee ballot;

(iii) place the voted absentee ballot in the envelope;

(iv) securely seal the envelope; and

(v) attach postage and deposit the envelope in the mail or deliver it in person to the election officer from whom the ballot was obtained.

(b) To vote an absentee ballot in the office of the election officer, the absent voter shall:

(i) complete and sign the affidavit on the envelope;

(ii) mark his votes on the absent-voter ballot;

(iii) place the voted absent-voter ballot in the envelope;

(iv) securely seal the envelope; and

(v) give the ballot and envelope to the election officer.

(2) An absentee ballot is not valid unless it is:

(a) voted according to the requirements of this section; and

~~[(a)]~~ (b) (i) received at the office of the appropriate election officer before the closing of polls on election day; or

~~[(b)]~~ (ii) clearly postmarked before election day and received in the office of the election officer before noon on the day of the official canvass following the election.

Section 9. Section **20A-3-408.5** is amended to read:

20A-3-408.5. Electronic registration and voting by military and overseas citizen voters in a hostile fire zone -- Procedures for accepting and processing a federal postcard application form -- Returned ballot.

(1) A military voter, an overseas citizen voter, or other voter covered under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) shall be allowed to transmit their federal postcard application form electronically to the county clerk in their county of residence if the voter is currently deployed in:

(a) a hostile fire zone; or
(b) other area where the mail service is unreliable and not sufficient to accommodate timely mail service.

(2) A voter covered under Subsection (1), shall file the federal postcard application form no later than 20 days before the day of the election in accordance with Subsection 20A-3-304(3)(a)(ii).

(3) Upon receiving a federal postcard application form under this section a county clerk shall review the federal postcard application form to verify:

(a) compliance with this section; and
(b) that the form has been properly completed and signed.
(4) Upon a determination of compliance under Subsection (3), a county clerk shall:
(a) register the voter, unless the voter is already registered;
(b) process the absentee ballot request; and
(c) electronically transmit a ballot to the voter who filed the federal postcard application form.

(5) A voter who receives a ballot under this section may transmit the ballot electronically to the county clerk in their county of residence if the voter:

(a) agrees to waive the right to a secret ballot in accordance with this section; and
(b) affirms in writing that the voter is currently deployed in:
(i) a hostile fire zone; or
(ii) other area where the mail service is unreliable and not sufficient to accommodate timely mail service.

(6) The electronically transmitted ballot shall be accompanied by the following statements: "I understand that by electronically transmitting my voted ballot I am voluntarily

waiving my right to a secret ballot. Signature of voter _____ Date _____"; and

"I affirm that I am currently deployed in a hostile fire zone" or

"I affirm that I am currently deployed in an area where mail service is unreliable and not sufficient to accommodate timely mail service."

(7) Notwithstanding the provisions of Subsections (5) and (6), the completed ballot transmitted under this section is considered a private record under Title 63, Chapter 2, Government Records Access and Management Act.

(8) A ballot transmitted under Subsection (5) shall be:

(a) transmitted no later than the date that is one day before the election day in accordance with Section 20A-3-406; and

(b) received by the ~~county clerk~~ election officer before noon on the ~~date~~ day of the official canvass in accordance with Subsection 20A-3-306(2)(b)(i).

(9) Upon the receipt of an electronically transmitted ballot under this section, a county clerk shall:

(a) verify the voter's signature from the federal postcard application form and ensure that it matches the voter's signature on the return ballot;

(b) duplicate the electronically transmitted ballot onto a regular ballot used by the county for resident voters; and

(c) maintain the electronically transmitted ballot ~~[for 22 months]~~ in accordance with ~~[Subsection]~~ the requirements of Section 20A-4-202~~(2)~~.

Section 10. Section ~~20A-4-107~~ is amended to read:

20A-4-107. Review and disposition of provisional ballot envelopes.

(1) As used in this section, a voter is "legally entitled to vote" if:

(a) the voter:

(i) is registered to vote in the state;

(ii) resides within the voting precinct where the voter seeks to vote; and

(iii) provided valid voter identification to the poll worker as indicated by a notation in the official register;

(b) the voter:

(i) is registered to vote in the state; and

(ii) did not vote in the voter's precinct of residence, but the ballot that the voter voted is

identical to the ballot voted in the voter's precinct of residence; or

(c) the voter:

(i) is registered to vote in the state;

(ii) the poll worker recorded in the official register that the voter either failed to provide valid voter identification or the documents provided as valid voter identification were inadequate; and

(iii) the county clerk verifies the voter's identity and residence through some other means.

(2) (a) Upon receipt of provisional ballot envelopes and any supplemental information provided by a voter in accordance with Subsection 20A-3-105.5(6), the election officer shall review the affirmation on the face of each provisional ballot envelope and determine if the person signing the affirmation is a registered voter and legally entitled to vote the ballot that the voter voted.

(b) If the election officer determines that the person is not a registered voter or is not legally entitled to vote the ballot that the voter voted, the election officer shall retain the ballot envelope, unopened, for the period specified in Section 20A-4-202 unless ordered by a court to produce or count it.

(c) If the election officer determines that the person is a registered voter and is legally entitled to vote the ballot that the voter voted, the election officer shall remove the ballot from the provisional ballot envelope and place the ballot with the absentee ballots to be counted with those ballots at the canvass.

(d) The election officer may not count, or allow to be counted a provisional ballot unless the voter's identity and residence is established by a preponderance of the evidence.

(3) If the election officer determines that the person is a registered voter, the election officer shall ensure that the voter registration records are updated to reflect the information provided on the provisional ballot envelope.

(4) If the election officer determines that the person is not a registered voter and the information on the provisional ballot envelope is complete, the election officer shall:

(a) consider the provisional ballot envelope a voter registration form; and

(b) register the voter.

Section 11. Section **20A-4-201** is amended to read:

20A-4-201. Delivery of election returns.

(1) One poll worker shall deliver the ballot box, the lock, and the key to:

(a) the election officer; or

(b) the location directed by the election officer.

(2) (a) Before they adjourn, the poll workers shall choose one or more of their number to deliver the election returns to the election officer.

(b) That poll worker or those poll workers shall:

(i) deliver the unopened envelopes or pouches to the election officer or counting center immediately but no later than ~~[24]~~ 12 hours after the polls close; or

(ii) if the polling place is 15 miles or more from the county seat, mail the election returns to the election officer by registered mail from the post office most convenient to the polling place within 24 hours after the polls close.

(3) The election officer shall pay each poll worker reasonable compensation for travel that is necessary to deliver the election returns and to return to the polling place.

(4) The requirements of this section shall not prohibit transmission of the unofficial vote count to the counting center via electronic means, provided that reasonable security measures are taken to preserve the integrity and privacy of the transmission.

Section 12. Section **20A-4-202** is amended to read:

20A-4-202. Election officers -- Disposition of ballots -- Release of number of provisional ballots cast.

(1) (a) Upon receipt of the election returns from a poll worker, the election officer shall:

(i) ensure that the poll worker has provided all of the ballots and election returns;

(ii) inspect the ballots and election returns to ensure that they are sealed;

(iii) (A) for paper ballots, deposit and lock the ballots and election returns in a safe and secure place; or

(B) for punch card ballots:

(I) count the ballots; and

(II) deposit and lock the ballots and election returns in a safe and secure place; and

(iv) for bond elections, provide a copy of the election results to the board of canvassers of the local political subdivision that called the bond election.

(b) Inspecting poll watchers appointed as provided in Section 20A-3-201 may be present and observe the election officer's receipt, inspection, and deposit of the ballots and election returns.

(2) Each election officer shall:

(a) no later than 5 p.m. on the day after the date of the election, determine the number of provisional ballots cast within the election officer's jurisdiction and make that number available to the public;

(b) preserve ballots for ~~[22]~~ 24 months after the election or until the time has expired during which the ballots could be used in an election contest;

(c) package and seal a true copy of the ballot label used in each voting precinct;

(d) preserve all other official election returns for at least ~~[22]~~ 24 months after an election; and

(e) after that time, destroy them without opening or examining them.

(3) (a) The election officer shall package and retain all tabulating cards and other materials used in the programming of the automatic tabulating equipment.

(b) The election officer:

(i) may access these tabulating cards and other materials;

(ii) may make copies of these materials and make changes to the copies;

(iii) may not alter or make changes to the materials themselves; and

(iv) within ~~[22]~~ 24 months after the election in which they were used, may dispose of those materials or retain them.

(4) (a) If an election contest is begun within 12 months, the election officer shall:

(i) keep the ballots and election returns unopened and unaltered until the contest is complete; or

(ii) surrender the ballots and election returns to the custody of the court having jurisdiction of the contest when ordered or subpoenaed to do so by that court.

(b) When all election contests arising from an election are complete, the election officer shall either:

(i) retain the ballots and election returns until the time for preserving them under this section has run; or

(ii) destroy the ballots and election returns remaining in his custody without opening or

examining them if the time for preserving them under this section has run.

Section 13. Section **20A-5-403** is amended to read:

20A-5-403. Polling places -- Booths -- Ballot boxes -- Inspections -- Provisions -- Arrangements.

(1) Each election officer shall:

(a) designate polling places for each voting precinct in the jurisdiction; and

(b) obtain the approval of the county or municipal legislative body or local district governing board for those polling places.

(2) (a) For each polling place, the election officer shall provide:

(i) an American flag;

(ii) a sufficient number of voting booths or compartments;

(iii) the voting devices, voting booths, ballots, ballot boxes, ballot labels, ballot sheets, write-in ballots, and any other records and supplies necessary to enable a voter to vote;

(iv) the constitutional amendment cards required by Part 1, Election Notices and Instructions;

(v) voter information pamphlets required by Title 20A, Chapter 7, Part 7, Voter Information Pamphlet; and

(vi) the instruction cards required by Section 20A-5-102.

(b) Each election officer shall ensure that:

(i) each voting booth is at a convenient height ~~[for writing, and is arranged so that the voter can prepare his]~~ and is equipped with a shield, enclosure, or curtain, or otherwise positioned in a manner that preserves the voter's right to a secret ballot and allows the voter to prepare the voter's ballot screened from observation;

(ii) there are a sufficient number of voting booths or voting devices to accommodate the voters at that polling place; and

(iii) there is at least one voting booth or voting device that is configured to accommodate persons with disabilities.

(c) Each county clerk shall provide a ballot box for each polling place that is large enough to properly receive and hold the ballots to be cast.

(3) (a) All polling places shall be physically inspected by each county clerk to ensure access by a person with a disability.

(b) Any issues concerning inaccessibility to polling places by a person with a disability discovered during the inspections referred to in Subsection (3)(a) or reported to the county clerk shall be:

(i) forwarded to the Office of the Lieutenant Governor; and
(ii) within six months of the time of the complaint, the issue of inaccessibility shall be either:

(A) remedied at the particular location by the county clerk;
(B) the county clerk shall designate an alternative accessible location for the particular precinct; or

(C) if no practical solution can be identified, file with the Office of the Lieutenant Governor a written explanation identifying the reasons compliance cannot reasonably be met.

(4) The municipality in which the election is held shall pay the cost of conducting each municipal election, including the cost of printing and supplies.

(5) The county clerk shall make detailed entries of all proceedings had under this chapter.

Section 14. Section **20A-5-605** is amended to read:

20A-5-605. Duties of poll workers.

(1) Poll workers shall:

(a) arrive at the polling place at a time determined by the election officer; ~~and~~
(b) remain until the official election returns are prepared for delivery~~[-]; and~~
(c) while serving as a poll worker, wear, in plain sight, a badge that is provided by the election officer and that displays:

(i) the words "Official Poll Worker";

(ii) the name of the poll worker;

(iii) the name and date of the election at which the poll worker is serving; and

(iv) the voting precinct or jurisdiction at which the poll worker is serving.

(2) The election officer may designate:

(a) certain poll workers to act as election judges;
(b) an election judge to act as the presiding election judge; and
(c) certain poll workers to act as clerks.

(3) Upon their arrival to open the polls, the poll workers shall:

- 834 (a) if the election officer has not designated which poll workers at a polling place are
835 assigned to act as election judges, as presiding election judge, or as clerks:
- 836 (i) designate two poll workers to act as election judges as necessary;
837 (ii) determine which election judge shall preside as necessary; and
838 (iii) determine which poll workers shall act as clerks as necessary;
- 839 (b) select one or more of their number to deliver the election returns to the election
840 officer or to the place that the election officer designates;
- 841 (c) display the United States flag;
- 842 (d) examine the voting devices to see that they are in proper working order and that
843 security devices have not been tampered with;
- 844 (e) place the voting devices, voting booths, and the ballot box in plain view of those
845 poll workers and watchers that are present;
- 846 (f) for paper ballots and ballot sheets, open the ballot packages in the presence of all
847 the poll workers;
- 848 (g) check the ballots, supplies, records, and forms;
- 849 (h) if directed to do so by the election officer:
- 850 (i) make any necessary corrections to the official ballots before they are distributed at
851 the polls; and
- 852 (ii) post any necessary notice of errors in electronic ballots before voting commences;
- 853 (i) post the sample ballots, instructions to voters, and constitutional amendments, if
854 any; and
- 855 (j) open the ballot box in the presence of those assembled, turn it upside down to empty
856 it of anything, and then, immediately before polls open, lock it, or if locks and keys are not
857 available, tape it securely.
- 858 (4) (a) If any poll worker fails to appear on the morning of the election, or fails or
859 refuses to act:
- 860 (i) at least six qualified electors from the voting precinct who are present at the polling
861 place at the hour designated by law for the opening of the polls shall fill the vacancy by
862 appointing another qualified person from the voting precinct who is a member of the same
863 political party as the poll worker who is being replaced to act as a poll worker; or
864 (ii) the election officer shall appoint a qualified person to act as a poll worker.

(b) If a majority of the poll workers are present, they shall open the polls, even though a poll worker has not arrived.

(5) (a) If it is impossible or inconvenient to hold an election at the polling place designated, the poll workers, after having assembled at or as near as practicable to the designated place, and before receiving any vote, may move to the nearest convenient place for holding the election.

(b) If the poll workers move to a new polling place, they shall display a proclamation of the change and station a peace officer or some other proper person at the original polling place to notify voters of the location of the new polling place.

(6) If the poll worker who received delivery of the ballots produces packages of substitute ballots accompanied by a written and sworn statement of the election officer that the ballots are substitute ballots because the original ballots were not received, were destroyed, or were stolen, the poll workers shall use those substitute ballots as the official election ballots.

(7) If, for any reason, none of the official or substitute ballots are ready for distribution at a polling place or, if the supply of ballots is exhausted before the polls are closed, the poll workers may use unofficial ballots, made as nearly as possible in the form of the official ballot, until substitutes prepared by the election officer are printed and delivered.

(8) When it is time to open the polls, one of the poll workers shall announce that the polls are open as required by Section 20A-1-302, or in the case of early voting, Section 20A-3-602.

(9) (a) The poll workers shall comply with the voting procedures and requirements of Title 20A, Chapter 3, Voting, in allowing people to vote.

(b) The poll workers may not allow any person, other than election officials and those admitted to vote, within six feet of voting devices, voting booths, and the ballot box.

(c) Besides the poll workers and watchers, the poll workers may not allow more than four voters in excess of the number of voting booths provided within six feet of voting devices, voting booths, and the ballot box.

(d) If necessary, the poll workers shall instruct each voter about how to operate the voting device before the voter enters the voting booth.

(e) (i) If the voter requests additional instructions after entering the voting booth, two poll workers may, if necessary, enter the booth and give the voter additional instructions.

896 (ii) In regular general elections and regular primary elections, the two poll workers who
897 enter the voting booth to assist the voter shall be of different political parties.

Legislative Review Note
as of 1-25-08 6:55 PM

Office of Legislative Research and General Counsel

H.B. 175 - Election Law Reforms

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, or businesses. There could be a cost of approximately \$25,000 for local governments to install shields on voting machines.
